

N.Y.S.D. Case #
14-cr-0545-2(CS)

14-4033

United States I. P. M. A.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 5th day of February, two thousand fifteen.

PRESENT: DENNIS JACOBS,
GUIDO CALABRESI,
RICHARD C. WESLEY,
Circuit Judges.

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: February 27, 2015**

United States of America,
Appellee,

- 17 -

14-4033

Selim Zherka,

Defendant-Appellant.*

FOR APPETIZANT.

FREDERICK P. HAFETZ, with Brian L. Doppelt and Kathleen E. Cassidy, on the brief, Hafetz &

* The Clerk of Court is respectfully directed to amend the official caption in this case to conform with the caption above.

1 Necheles LLP, New York, New York.
2

3 **FOR APPELLEE:**

4 ELLIOT B. JACOBSON, with Michael
5 A. Levy, on the brief, Assistant
6 United States Attorneys (for
7 Preet Bharara, United States
8 Attorney for the Southern
9 District of New York), New York,
New York.

10
11 Appeal from an order of the United States District
12 Court for the Southern District of New York (Seibel, J.).
13

14 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
15 **AND DECREED** that the order of the district court be
16 **AFFIRMED.**
17

18 Defendant Selim Zherka appeals from an order of the
19 United States District Court for the Southern District of
20 New York (Seibel, J.), granting the government's motion for
21 detention pending trial. We assume the parties' familiarity
22 with the underlying facts, the procedural history, and the
23 issues presented for review.
24

25 The Bail Reform Act of 1984 requires pre-trial release
26 on a personal recognizance bond "unless the [court]
27 determines that such release will not reasonably assure the
28 appearance of the person as required or will endanger the
29 safety of any other person or the community." 18 U.S.C.
30 § 3142(b). A serious risk of obstruction of justice may
31 qualify as such a danger to the community. See United
32 States v. LaFontaine, 210 F.3d 125, 134-35 (2d Cir. 2000).
33

34 If the district court determines that release on the
35 defendant's personal recognizance creates a risk of flight
36 or a danger to the community, "the law still favors pre-
37 trial release," United States v. Sabhnani, 493 F.3d 63, 75
38 (2d Cir. 2007), but "subject to the least restrictive
39 further condition, or combination of conditions, that [the
40 court] determines will reasonably assure the appearance of
41 the person as required and the safety of any other person
42 and the community," 18 U.S.C. § 3142(c)(1)(B).
43

44 Only if the district court finds "that no condition or
45 combination of conditions will reasonably assure the
46 appearance of the person as required and the safety of any
47 other person and the community" shall the court "order the

1 detention of the person before trial." 18 U.S.C. § 3142(e).
 2 "Under this statutory scheme, 'it is only a limited group of
 3 offenders who should be denied bail pending trial.'"
 4 Sabhnani, 493 F.3d at 75 (quoting United States v. Shakur,
 5 817 F.2d 189, 195 (2d Cir. 1987)) (internal quotation marks
 6 omitted).¹

7
 8 Assuming the district court applied the correct legal
 9 standard, we review an order of detention only for clear
 10 error. United States v. Abuhamra, 389 F.3d 309, 317 (2d
 11 Cir. 2004). "This clear error standard applies not only to
 12 the court's specific predicate factual findings but also to
 13 its overall assessment, based on those predicate facts, as
 14 to the risk of flight or danger presented by defendant's
 15 release." Id.

16
 17 The district court's order of detention pending trial,
 18 although interlocutory, "qualifies as a final order that may
 19 be directly appealed to this court." Abuhamra, 389 F.3d at
 20 317; see also 18 U.S.C. § 3145(c).

21
 22 After a lengthy detention hearing, the district court
 23 made the following factual findings: (1) Zherka is a flight
 24 risk by reason of his incentive to flee, foreign-born
 25 relatives, foreign assets, and prior statements about moving
 26 to Europe; (2) Zherka is a danger to the community by reason
 27 of prior instances of violence (and more recent boasts about
 28 that violence), as well as a history of obstruction of
 29 justice; and (3) no condition (or combination of conditions)
 30 could be imposed, short of detention, that would reasonably
 31 assure Zherka's presence at trial or the safety of the
 32 community.

33
 34 The district court applied the correct legal standard
 35 and, on this record, we cannot say that any of the district
 36 court's factual findings--about risk of flight,
 37 dangerousness, or less restrictive conditions--were clearly
 38 erroneous. So we must affirm the order of detention.

39

¹ "Certain crimes trigger a statutory presumption
 that no condition or combination of conditions will
 reasonably assure a defendant's appearance before the court
 or the safety of the community." Sabhnani, 493 F.3d at 75
 n.14 (citing 18 U.S.C. § 3142(e)). None of these crimes is
 at issue here.

For the foregoing reasons, and finding no merit in Zherka's other arguments, we hereby **AFFIRM** the order of the district court.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK

UNITED STATES



Catherine O'Hearn Wolfe

A True Copy

Catherine O'Hagan Wolfe—Clerk

United States Court of Appeals, Second Circuit



A handwritten signature "Catherine St. Paul Wolfe" is written across a circular official seal. The seal is blue and white, containing the text "UNITED STATES COURT OF APPEALS" around the border, "SECOND CIRCUIT" in the center, and two small stars at the top.